

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF WEST VIRGINIA**

AVINOAM DAMTI,

Plaintiff,

v.

Civil Action No. 2:07cv28

**OFFICER GONZALES, OFFICER MURPHY,
OFFICER PHELPS, OFFICER CURRAS, OFFICER
R. WILSON, OFFICER VERONICA FERNANDEZ,
OFFICER WILLIAM LAYHUE, OFFICER R. TRYBUS,
OFFICER YOUNG, OFFICER LEISURE, OFFICER GARCIA,
CAROL KONCHAN, WARDEN AL HAYNES,
DOMINIC GUTIERREZ, SR., SUSAN S. McCLINTOCK,
DR. WATERS, ADMINISTRATOR BRESKOACH,
MARTHA BLANCO, KIM WHITE, HARRELL WATTS,
CAPT. OF USP HAZELTON, OFFICER GRADISKA,**

Defendants.

ORDER

It will be recalled that on November 8, 2007, Magistrate Judge Kaull filed his Report and Recommendation, wherein the Plaintiff was directed, in accordance with 28 U.S.C. § 636(b)(1), to file with the Clerk of Court any written objections within ten (10) days after being served with a copy of the Report and Recommendation. On November 26, 2007, Plaintiff filed his Objections to Magistrate's Report and Recommendation.

Upon examination of the report from the Magistrate Judge, it appears to the Court that the issues raised by the Plaintiff in his Complaint, brought pursuant to Bivens v. Six Unknown Agents of Fed. Bureau of Narcotics, 403 U.S. 388 (1971), wherein Plaintiff alleges that he was improperly placed to work among high security prisoners, that he was injured by an inmate while there, and that he is being denied medical care, were thoroughly considered by Magistrate Judge Kaull in his Report and

Recommendation. Upon review of the Plaintiff's objections, the Court finds that the Plaintiff has not raised any issues that were not already thoroughly considered and addressed by the Magistrate Judge in his Report and Recommendation. Moreover, the Court, upon an independent de novo consideration of all matters now before it, is of the opinion that the Report and Recommendation accurately reflects the law applicable to the facts and circumstances before the Court in this action. Therefore, it is

ORDERED that Magistrate Judge Kaull's Report and Recommendation be, and the same hereby is, accepted in whole and that this civil action proceed in accordance with the recommendation of the Magistrate Judge. Accordingly, it is

ORDERED that the Plaintiff's Bivens Complaint against Defendants Wilson, Fernandez, Garcia, Layhue, Trybus, Gutierrez, McClintock, White and Watts be, and the same hereby are, **DISMISSED with prejudice** pursuant to 28 U.S.C. §§1915A(b) and 1915(e) for failure to state a claim. It is further

ORDERED that Plaintiff's Bivens Complaint against Konchan, Brescoach, Waters and Blanco for deliberate indifference to serious medical needs be, and the same hereby are, **DISMISSED with prejudice** for failure to state a claim. It is further

ORDERED that Plaintiff's Bivens Complaint against Defendants Gonzales, Murphy, Phelps, Curras, Young, Leisure, Haynes, Captain at Hazelton, and Gradiska for failure to protect shall be **SERVED** upon said Defendants by the United States Marshal Service, and an Answer shall be filed. Copies of the summons and complaint shall also be served on the United States Attorney for the Northern District of West Virginia and the Attorney General of the United States by certified mail, return receipt requested. It is further

ORDERED that the Clerk shall enter judgment for Defendants Wilson,
Fernandez, Garcia, Layhue, Trybus, Gutierrez, McClintock, White, Watts, Konchan,
Brescoach, Waters and Blanco.

ENTER: May 30, 2007


United States District Judge